

**STATE OF LOUISIANA**

**DEPARTMENT OF ENVIRONMENTAL QUALITY**

**IN THE MATTER OF:**

**DOW CHEMICAL USA  
(LOUISIANA DIVISION)**

**PROCEEDINGS UNDER THE LOUISIANA  
ENVIRONMENTAL QUALITY ACT  
LA. R.S. 30:2001, ET SEQ.**

**\*TRACKING NUMBERS**

**\*WE-CN-00-0085, WE-CN-00-0085A,**

**\*WE- CN-02-0258, AE-P-01-0069,**

**\*HE-P-01-0621, HE-CN-01-0221,**

**\*AE-CN-02-0057**

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**\*AGENCY INTEREST NUMBERS 1409**

**\*and 1007**

**SETTLEMENT AGREEMENT**

The following Settlement is hereby agreed to between The Dow Chemical Company (Louisiana Division) (Respondent) and the State of Louisiana through the Louisiana Department of Environmental Quality, (Department), under authority granted by the Louisiana Environmental Quality Act, LSA- R.S. 30:2001, et seq., (the Act).

**I.**

Respondent is a chemical and plastics manufacturer that operates a facility in Iberville and West Baton Rouge Parishes, which is located off Louisiana Highway 1 near the city of Plaquemine, Louisiana (hereafter Facility).

Respondent was authorized to discharge certain quantities and/or qualities to the Mississippi River and Bayou Bourbeaux under the terms and conditions of Water Discharge Permit WP 1561, which was effective on November 23, 1987 and continued in effect until March 1, 2002. As a result of a pending petition for a Fundamentally Different Factor (FDF) variance, transfer of NPDES permit LA0003301 (effective on June 1988) to the Louisiana Pollutant Discharge Elimination System (LPDES) program was deferred until resolution of that petition by the Environmental Protection Agency (EPA). Subsequently,

Respondent was issued a National Pollutant Discharge Elimination System (NPDES) permit by the EPA that upon issuance became Louisiana Pollutant Discharge Elimination System (LPDES) permit LA0003301 by operation of law with an effective date of March 1, 2002, and an expiration date of November 30, 2006.

Respondent's Facility includes a permitted hazardous waste treatment, storage, and disposal (TSD) facility, which bears EPA identification number LAD 008 187 080. As part of this hazardous waste TSD facility, Respondent operates four boilers which have interim status and which are subject to the Boilers and Industrial Furnace Burning Hazardous Waste (BIF) Rule.

Respondent operates chemical and plastic plants at its Facility pursuant to a number of air permits. Such plants include but are not limited to the following. An ethylene oxide and ethylene glycol production plant known as Glycol II operates under permit number 2203 (M-1), issued on February 5, 2001. The Cellulose plant, which produces hydroxy propyl methylcellulose, operates under permit number 2227-VO, issued on June 28, 2000. A plant producing vinyl chloride, which is called Vinyl II, operates under permit number 2665-V4, issued on August 20, 2002. The Chlorine Plant, which produces chlorine and sodium hydroxide, operates under permit number 2573-V2, issued on March 13, 2002.

Respondent also owns and/or operates a brine production facility located off of Louisiana Highway 70 two miles east of Louisiana Highway 69 in Grand Bayou, Assumption Parish, Louisiana. The Respondent does not have a Louisiana Pollutant Discharge Elimination System (LPDES) permit or any other authority to discharge wastewater and/or other substances (other than storm water associated with industrial activity) to waters of the state from the brine production facility.

## II.

The allegations which form the basis of the enforcement actions covered by this Settlement Agreement are as follows:

- A. On or about October 17, 2000, Respondent was issued Consolidated Compliance Order & Notice of Potential Penalty (CONOPP) WE-CN-00-0085 to address alleged violations of the Act and Water Quality Regulations, LAC 33:Chapter IX, cited in the CONOPP, a copy of which is attached to this Settlement Agreement and incorporated herein as Exhibit A. On or about December 17, 2001, Respondent was issued Amended CONOPP WE-CN-00-0085A, a copy of which is also attached to this Settlement Agreement and incorporated herein as Exhibit B, amending the original compliance order.
- B. On or about April 19, 2002, Respondent was issued CONOPP WE-CN-02-0258, a copy of which is attached to this Settlement Agreement and incorporated herein as Exhibit C, that alleged violations of the Act and Water Quality Regulations, LAC 33: Chapter IX.
- C. On or about October 16, 2001, Respondent was issued a Penalty Assessment, AE-P-01-0069, a copy of which is attached to this Settlement Agreement and incorporated herein as Exhibit D, which alleged violations of the Act and LAC 33:III.5122 of the Air Quality Regulations.
- D. On or about November 29, 2001, Respondent was issued CONOPP HE-CN-01-0221, a copy of which is attached to this Settlement Agreement and incorporated herein as Exhibit E, alleging violations of the Act and LAC 33:V.3007 of the Hazardous Waste Regulations.
- E. On or about December 3, 2002, Respondent was issued a Penalty Assessment, HE-P-01-0621, a copy of which is attached to this Settlement Agreement and incorporated herein as Exhibit F, alleging violations of the Act and LAC 33:V.3007 of the Hazardous Waste Regulations.

F. On or about October 1, 2002, Respondent was issued CONOPP AE-CN-02-0057, a copy of which is attached to this Settlement Agreement and incorporated herein as Exhibit G, alleging violations of the Act and LAC 33:III.905 of the Air Quality Regulations.

### III.

Respondent timely requested Adjudicatory Hearings in connection with the above referenced CONOPPs and Penalty Assessments.

### IV.

After considering additional information provided by Respondent, the Department determined that certain violations it had alleged in some of the above-cited Penalty Assessments and CONOPPs were not actual violations. The alleged failure by Respondent to conduct semi-annual monitoring during the period October 1, 1998 to March 31, 1999 did not constitute a violation as had been alleged in Penalty Assessment AE-P-01-0069. The Department also determined that alleged violations II.A. and II.D. in Penalty Assessment HE-P-01-0621 (also alleged violations II.A and II.D. in CONOPP HE-CN-01-0221) were not violations.

### V.

The Department has reviewed other matters involving Respondent's Facility that the Department has alleged were violations. After further review of daily calibration records for monitoring carbon monoxide emissions by continuous emission monitors, the Department alleged that Respondent had exceeded 3% of span of the certified cylinder gas without recalibrating for a total of 14 days. The Department also reviewed all alleged water permit violations for October 2001 through December 2002, alleged air quality violations occurring on December 27, 2001, May 6, 2002 and October 30, 2002, and all alleged Title V deviations reported to the Department by Respondent prior to the date of Respondent's

execution of this Settlement Agreement.

## VI.

By entering into this Settlement Agreement, Respondent does not admit that it committed any violation or that it is liable for any fines, forfeitures and/or penalties. Respondent and the Department agree that settlement of (1) the violations alleged in the CONOPPs, as amended and cited above, (2) the violations alleged in the Penalty Assessments, cited above, and (3) the other alleged violations referred to in Paragraph V above without further litigation or trial of any issues is fair, reasonable and in the public interest and that this settlement is the most appropriate way of resolving the violations alleged by the Department.

## VII.

The Respondent, without making any admission of liability, agrees to make or to undertake, and the Department agrees to accept, the civil penalty payment described in Paragraph VIII below and the Beneficial Environmental Projects (BEPs) described in Paragraph IX below in full and complete settlement of any and all claims of noncompliance in the CONOPPs, as amended and cited above, and Penalty Assessments cited above and of any and all claims of noncompliance arising from the other alleged violations referred to in Paragraph V above , through execution of this Settlement Agreement.

## VIII.

The civil penalty amount to be paid by Respondent shall be One Million and 00/100 Dollars (\$1,000,000.00).

## IX.

Respondent agrees to implement and/or perform the following beneficial environmental projects:

- A. Respondent shall contribute Three Hundred Thousand and 00/100 Dollars (\$300,000.00) to a special trust account established by the Department to fund the development and testing of

software necessary to implement electronic submission of discharge monitoring reports (DMR's) by facilities in the State under the LPDES program. The contribution will help DEQ promote environmental compliance by regulated entities throughout Louisiana. In addition, the contribution will fund a training and educational program on the electronic DMR submission procedures. Training and educational sessions/seminars will be available to regulated facilities and will be conducted at multiple sites statewide. The training's main focus will be on improving data reporting, collection, validation and submission procedures. Established rules and compliance verification requirements will be emphasized. The goal of the program is to improve quality and consistency of DMR data submitted by the regulated community. This contribution will be payable in two (2) installments with the first installment of One Hundred Fifty Thousand and 00/100 Dollars (\$150,000.00) being due within thirty (30) days from the effective date of this Settlement Agreement. The second installment in the amount of One Hundred Fifty Thousand and 00/100 (\$150,000.00) will be due by January 15, 2004.

- B. Respondent will contribute Fifty Thousand and no/100 Dollars (\$50,000.00) to the City of Plaquemine for the development of the Waterfront Park located adjacent to the Plaquemine Locks, payable in two equal installments of Twenty - Five Thousand and no/100 Dollars (\$25,000.00), with the first payment being due before the expiration of the first full quarter following the effective date of this Settlement Agreement and the second payment being due before the anniversary of the first payment due date. These funds will be specifically earmarked for funding of environmental enhancement and environmental educational projects, including introduction, planting, and maintenance of trees and shrubs; promoting the flow and use of natural waterways, such as Plaquemine Bayou; construction and maintenance of exhibits

explaining the importance of Louisiana's freshwater wetlands, flora and fauna; and recycling or other beautification activities.

- C. Respondent shall contribute One Million and no/100 Dollars (\$1,000,000.00) in support of the America's Wetlands Campaign To Save Coastal Louisiana, by contributing Two Hundred Thousand and no/100 Dollars (\$200,000.00) to the Audubon Institute for the development of an IMAX film on the importance of Louisiana coastal wetlands to the ecosystem, payable within thirty (30) days of the effective date of this Settlement Agreement and by contributing Eight Hundred Thousand and no/100 Dollars (\$800,000.00) to the America's Wetlands Discovery Center in Lake Charles, Louisiana for an environmental education center, payable in two installments, with the first installment of Four Hundred Thousand and no/100 Dollars (\$400,000.00) being due by January 15, 2004, and the second installment of Four Hundred Thousand and no/100 Dollars (\$400,000.00) being due by January 15, 2005.
- D. To assist the Department in creating an advertising campaign to heighten public awareness regarding ozone formation and its effects on the environment and public, Respondent shall spend Fifty Thousand and no/100 Dollars (\$50,000.00), by contracting directly with an individual or firm to supervise the creation and implementation of an ozone awareness campaign. This campaign, through broadcast public service announcements or printed information, will provide information on voluntary actions the public can implement to reduce emissions of ozone-forming pollutants during ozone season. This educational program is aimed at bringing the Baton Rouge area (East Baton Rouge, West Baton Rouge, Iberville, Ascension and Livingston parishes) into attainment.
- E. Respondent shall submit quarterly reports regarding its progress on the above projects.

The first shall be due on the 5<sup>th</sup> day of the third month following the date the Department signs this Settlement. Quarterly reports shall be submitted on the 5<sup>th</sup> day of every third month thereafter until all the projects are completed. Each such quarterly report shall include, for each project, a description of the project, tasks completed, tasks remaining, the percentage completed, and money expended on the project through the date of the report. Upon completion of all projects required under this Settlement, Respondent shall submit a final report to include a summary of all the information previously submitted and the total amount spent on the projects listed above. It shall also contain a certification that the projects were completed as described.

- F. If Respondent does not contribute and spend, as described above for the beneficial environmental projects, the amount of One Million Four Hundred Thousand and 00/100 Dollars (\$1,400,000.00), then it shall, in its final report, propose additional projects for the Department's approval or pay to the Department an amount equal to the difference between the amount of money agreed to be spent and the amount of money actually spent.

#### X.

Respondent further agrees that the Department may consider the inspection reports, the CONOPPs and this Settlement Agreement for the purpose of determining compliance history in connection with any future enforcement or permitting action by the Department against Respondent.

#### XI.

This agreement shall be considered a final order of the secretary for all purposes, including, but not limited to, enforcement under La.R.S. 30: 2025, and Respondent hereby waives any right to administrative



or judicial review of the terms of this agreement.

## XII.

This settlement is being made in the interest of settling the State's claims and avoiding for both parties the expense and effort involved in litigation or an adjudicatory hearing. In agreeing to the compromise and settlement, the Department considered the factors for issuing civil penalties set forth in LSA- R. S. 30:2025(E) of the Act and the rules relating to beneficial environmental projects set forth in LAC 33:I. Chapter 25.

## XIII.

The Respondent has caused a public notice advertisement to be placed in the official journal of the parish governing authority in the Parishes of Iberville, West Baton Rouge and Assumption. The advertisement, in form, wording, and size approved by the Department, announced the availability of this settlement for public review and comment and the opportunity for a public hearing. Respondent has submitted a proof-of-publication affidavit to the Department and, as of the date this Settlement Agreement is executed on behalf of the Department, more than forty-five (45) days have elapsed since publication of the notice.

## XIV.

Payment of the civil penalty described in Paragraph VIII above is to be made in four installments of Two Hundred Fifty Thousand and no/100 Dollars (\$250,000.00) each, with the first installment being due and payable by September 15, 2003. Subsequent installments shall be due and payable by January 15, 2004, April 15, 2004, and July 15, 2004. If any payment is not received by the specified date, this Agreement is voidable at the option of the Department. Penalties are to be made payable to the Department of Environmental Quality and mailed to the attention of Darryl Serio, Office of Management and Finance,

Department of Environmental Quality, Post Office Box 82231, Baton Rouge, Louisiana, 70884-2231.

XV.

In consideration of the above, any and all claims for penalties arising from or which could arise from the facts underlying (1) the alleged violations in the CONOPPs, as amended and cited above, (2) the alleged violations in the Penalty Assessments cited above, and (3) the other alleged violations referred to in Paragraph V above are hereby compromised, released and settled.

XVI

The effective date of this Settlement Agreement shall be the date the Department provides Respondent with written notice of the signing of this Settlement Agreement by the Department pursuant to La. R.S. 30:2050.7.

XVII.

Each undersigned representative of the parties certifies that he or she is fully authorized to execute this Settlement Agreement on behalf of his/her respective party, and to legally bind such party to its terms and conditions.

WITNESSES:

\_\_\_\_\_

RESPONDENT

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

\_\_\_\_\_  
TITLE: \_\_\_\_\_

THUS DONE AND SIGNED before me this \_\_\_\_ day of April, 2003 in Baton Rouge,  
Louisiana.

\_\_\_\_\_  
NOTARY PUBLIC

WITNESSES:

STATE OF LOUISIANA  
L. Hall Bohlinger, Secretary  
Department of Environmental Quality

\_\_\_\_\_

\_\_\_\_\_

BY: \_\_\_\_\_  
R. Bruce Hammatt, Assistant Secretary  
Office of Environmental Compliance

THUS DONE AND SIGNED before me this \_\_\_\_ day of \_\_\_\_\_, 2003, in Baton  
Rouge, Louisiana.

\_\_\_\_\_  
NOTARY PUBLIC

Approved: \_\_\_\_\_  
R. Bruce Hammatt, Assistant Secretary

**STATE OF LOUISIANA**

**DEPARTMENT OF ENVIRONMENTAL QUALITY**

**IN THE MATTER OF:**

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**\*AGENCY INTEREST NUMBERS 1409**

**\*and 1007**

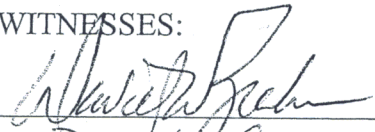
This Settlement Agreement has been reviewed, and is concurred in, by the Attorney General,  
under the provisions of La. R.S. 30:2050.7.

**RICHARD P. IEYOUB  
ATTORNEY GENERAL**

**DATED:\_\_\_\_\_**

**BY:\_\_\_\_\_**  
**ASSISTANT ATTORNEY GENERAL**

WITNESSES:

  
DAVID W. GRAHAM


Christine E. Baldridge  
Christine E. Baldridge

RESPONDENT

BY:

NAME:

TITLE:

  
John A. Gray  
Counsel

THUS DONE AND SIGNED before me this 11<sup>th</sup> day of April, 2003 in Baton Rouge,

Louisiana.

  
NOTARY PUBLIC

WITNESSES:

STATE OF LOUISIANA  
L. Hall Bohlinger, Secretary  
Department of Environmental Quality

\_\_\_\_\_

\_\_\_\_\_

BY: \_\_\_\_\_  
R. Bruce Hammatt, Assistant Secretary  
Office of Environmental Compliance

THUS DONE AND SIGNED before me this \_\_\_\_ day of \_\_\_\_\_, 2003, in  
Baton Rouge, Louisiana.

\_\_\_\_\_  
NOTARY PUBLIC

Approved: *R. Bruce Hammatt*  
R. Bruce Hammatt, Assistant Secretary